IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4010 of 2006
Date of Decision: 14.11.2006

Nirmal Singh Bhatia ...Appellant

Versus

Dabinder Kumar ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Ranjivan Singh, Advocate, for the appellant.

JUDGMENT

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby suit for possession of House No. HE-92 (2nd Floor), Phase-V, Sector 59, situated in SAS Nagar, Mohali, after terminating his tenancy by serving a notice, was decreed.

The defendant-appellant was inducted as a tenant in the year 1978. The plaintiff-respondent sought the possession of the tenanted premises after termination of tenancy on the ground that the premises are exempt from the provisions of East Punjab Urban Rent Restriction Act, 1949. To prove the termination of the tenancy, the plaintiff relied upon notice Exhibit PW1/E served under registered post vide receipt Exhibit PW1/B, registered envelope which was returned unclaimed as Exhibit PW1/C and the postal certificate Exhibit PW1/D. The Courts also took into consideration the statement of the defendant that the address mentioned in the registered letter is the correct address and that the notice Exhibit PW1/C

bears that address. Therefore, it was concluded that the proper notice, as required under Section 106 of the Transfer of Property Act, 1882, was served upon the defendant and presumption of proper service is in favour of the plaintiff.

Learned counsel for the appellant has vehemently argued that the registered letter was returned with the remark “unclaimed”, therefore, it is contended that the notice was never delivered to the defendant. Still further, it is alleged that the notice allegedly sent under postal certificate bears the incorrect address, in as much as the house number wherein the defendant is residing is HE-92 whereas in the certificate, the house number mentioned is 92 alone. Therefore, it cannot be said that the tenancy of the defendant-appellant has been validly terminated. Learned counsel for the appellant has also relied upon a judgment of the Allahabad High Court in **Hub Lal v. Bhudeo Prasad Sharma 1980 All.L.J.437.**

After hearing learned counsel for the defendant-appellant, I do not find any merit in the present appeal. The registered letter Exhibit PW1/C was sent through Registered Post as well as Under Postal Certificate Exhibit PW1/D. The postal receipt of registered letter is produced on record as Exhibit PW1/B. The notice Exhibit PW1/C bears the correct address. The report “unclaimed” in fact suggests that the addressee has not claimed the same. In other words, it is nothing but refusal on the part of the addressee to receive the registered envelope.

The Hon'ble Supreme Court in **M/s Madan and Co. v. Wazir Jaivir Chand AIR 1989 Supreme Court 630**, has considered an argument that the postal service can neither be presumed nor considered to be good service, where the letter is returned to the sender due to non availability of

the addressee. The Court found that an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as “not found”, “not in station”, “addressee has left” and so on. It was held that if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. Thus, such report on the registered envelope was considered to be good service. In **D. Vinod Shivappa v. Nanda Belliappa 2006(6) Supreme Court Cases 456**, the Court dealt with a case in respect a notice which could not be served on the addressee for one or the other reason, such as his non-availability at the time of delivery and premises remaining locked on account of his having gone elsewhere etc. in terms of the requirements of service of notice under Section 138 of the Negotiable Instruments Act, 1881. The Court found that if in such case the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. It was found that a person can dodge the postman for about a month or two, or a person who can get a fake endorsement made regarding his non-availability can successfully avoid his prosecution because the payee is bound to issue notice to him within a period of 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. The Court concluded as under:-

> “We cannot also lose sight of the fact that the drawer may by dubious means manage to get an incorrect endorsement made on the envelope that the premises has been found locked or that the addressee was not available at the time when postman went for delivery of the letter. It may be that the address is correct and even the addressee is available but a wrong endorsement is manipulated by the addressee. In such a case, if the facts are

> proved, it may amount to refusal of the notice. If the complainant is able to prove that the drawer of the cheque knew about the notice and deliberately evaded service and got a false endorsement made only to defeat the process of law, the court shall presume service of notice. This, however, is a matter of evidence and proof. Thus even in a case where the notice is returned with the endorsement that the premises has always been found locked or the addressee was not available at the time of postal delivery, it will be open to the complainant to prove at the trial by evidence that the endorsement is not correct and that the addressee, namely, the drawer of the cheque, with knowledge of the notice had deliberately avoided to receive notice."

The principles laid down by the Hon'ble Supreme Court are applicable with its full rigour in the case of termination of tenancy in terms of the provisions of Section 106 of the Transfer of Property Act, 1882. Unless the tenancy is terminated, the suit for possession cannot be filed. It is not unusual for the tenant to avoid the receipt of the notice and arrange for endorsements. In the present case, the endorsement "unclaimed" is the one which raises a presumption of service in as much as it is the stand of the appellant himself that the address mentioned on the registered letter envelope is the correct address. Thus, if a notice sent on a correct address is returned to the sender, it can only be for the reason that the same is not received by the addressee. It is, thus, obvious that the tenant was avoiding the receipt of notice and managed the report "unclaimed". The presumption that notice was duly received by the tenant, is not proved to be rebutted by bald statement of the tenant that he has not received such notice.

In the judgment referred to by the learned counsel for the appellant, the presumption drawn by the Court regarding receipt of notice

stood rebutted. In the present case, both the Courts have found that the notice was duly served on the tenant. Apart from the bald statement, there is no other evidence, which may lead to an inference that the presumption of deemed service of notice stands rebutted.

Still further, the argument that the notice sent under the postal certificate, does not bear a correct house number, is not tenable. Though the correct house number is HE-92, but there is no evidence to the effect that there is any other house in Phase-V which bears House No. 92 alone Therefore, it cannot be said that the address was not complete and the letter could not have been delivered to the addressee. It is not the case that the said letter has been returned undelivered as well. Therefore, the argument raised by the learned counsel for the appellant that postal certificate did not bear the correct address in the second appeal for the first time, is not tenable.

Consequently, I do not find any patent illegality or irregularity in the findings recorded by the Courts below, which may give rise to any substantial question of law.

Hence, the present appeal is dismissed.

14-11-2006 (HEMANT GUPTA)
ds JUDGE